

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 11
EBRO FOODS, INC.)
Debtor and Debtor in Possession.) Case No. 09-10101
) Hon. Eugene R. Wedoff

NOTICE OF MOTION

PLEASE TAKE NOTICE that on November 4, 2009 at 9:30 a.m. I shall appear before the Hon. Eugene R. Wedoff, or any judge sitting in his stead, at the United States Bankruptcy Court for the Northern District of Illinois, located in Courtroom 744, Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois 60604, and present PACA Trust Beneficiary Harvest Food Group, Inc.'s Motion to Compel Payment of PACA Trust Claim.

Date: October 25, 2009

Respectfully submitted,

HARVEST FOOD GROUP, INC.

By: /s/ Michael J. Keaton, Esq.
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing was served electronically to all parties on the above-captioned matter through the ECF system at the electronic address on file with the Clerk's Office or by depositing same in the U.S. Mail, postage pre-paid and properly addressed on this day, October 25, 2009.

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**PACA TRUST BENEFICIARY HARVEST FOOD GROUP, INC.'S MOTION TO
COMPEL PAYMENT OF PACA TRUST CLAIM**

Harvest Food Group, Inc., (the “Claimant”), by and through its undersigned counsel, hereby moves this Court to enter an order compelling Ebro Foods, Inc., (the “Debtor”) to pay Claimant’s claims arising under the Perishable Agricultural Commodities Act, 1930, 7 U.S.C. §§ 499a-499t (2007 & Supp. 2009) (the “PACA”). In support of its Motion, the PACA Claimant states as follows:

1. The Claimant holds a claim against the Debtor qualified as a trust claim under PACA. The PACA requires that the Debtor satisfy Claimant’s PACA claim before that of other creditors, because all assets in this matter are impressed with the PACA trust and are excluded from property of the estate under § 541(d).

2. Specifically, the PACA Claimant is an unpaid supplier of perishable agricultural commodities (“Produce”) to the Debtor and has preserved its trust rights under the PACA by placing the required trust preservation language on its invoices, which were issued to Debtor, in accordance with § 499(e) of the PACA. *See Exhibit A* (Claimant’s invoices to the Debtor). Additionally, Claimant held a valid PACA license, and was so licensed during all times relevant to the Claimant’s PACA claim.

3. The PACA requires all entities dealing in Produce to hold the inventory of the Produce and the receivables derived from sale of the Produce, as well as the products and proceeds thereof, in trust for the benefit of all unpaid Produce suppliers who have properly preserved their trust rights in accordance with the PACA.

4. Under the PACA, Debtor was required to maintain the PACA trust at a fully funded level to guarantee the full and timely payment of PACA trust claims held by Claimant.

5. Debtor has failed to satisfy the claims of Claimant as required under the PACA, despite Claimant's notice to Defendant of their perfected PACA trust claims. *See* (Claims Registry #19).

6. For these reasons, and for those set forth more fully in PACA Trust Beneficiary Harvest Food Group, Inc.'s Memorandum of Law in Support of its Objection to the Second Application for Interim Compensation for Professional Services and Reimbursement of Expenses of Forrest L. Inrgram, P.C. (D.E. #92), Claimant is entitled to payment of its PACA trust claims.

WHEREFORE, Claimant respectfully requests that this Court issue an order compelling the Debtor to immediately pay the valid PACA trust claim of Claimant, award costs and attorney's fees, and for such other and further relief as this Honorable Court deems appropriate upon consideration of this matter.

Date: October 25, 2009

Respectfully submitted,

HARVEST FOOD GROUP, INC.

By: /s/ Michael J. Keaton, Esq.
One of Its Attorneys

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